Plaza VII 45 South Seventh Street Suite 3400 Minneapolis, MN 55402 (612) 344-9300 Telex: 701605 FAX: (612) 344-9376 Brussels
Chicago
London
Minneapolis
New York
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St. Paul
Washington, D. C.

1-156A013

June 3, 1991

. 17371

VIA FEDERAL EXPRESS

JUN 5 1991 -1 15 PM INTERSTATE COUMEPOE COMMISSION

Ms. Mildred Lee

Secretary

Interstate Commerce Commission

12th Street and Constitution Avenue
Washington, DC 20423

Re: Dakota Rail, Inc. Chattel Mortgage, Assignment and Security Agreement

Dear Ms. Lee:

I have enclosed an original and one copy of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code. This document is a Chattel Mortgage, Assignment and Security Agreement, a primary document, dated May 24, 1991.

The names and addresses of the parties to the documents are as follows:

Debtor/Mortgagor:

Dakota Rail, Inc.

25 Adams Street North

Hutchinson, Minnesota 55350

Secured Party/Mortgagee:

Prairie Holding Corporation

801 W. Bay Drive

Suite 800

Largo, Florida 34640

A description of the equipment covered by the document follows:

81A AN F7A Locomotive, built by EMD-A Division of General Motors in 1950, 1500HP, Diesel Engine; F7B SLUG POWER UNIT, built by EMD-A Division of General Motors in 1950, this unit houses a Rolls Royce 250 kilowatt generator, which supplies power to the dinner train, generator bought new 1986; 81C AN F7A Locomotive, built by EMD-A Division of General Motors in 1950, 1500 HP, Diesel Engine; #191 Dining Coach, built 1950's, contains 16 dining tables, 64 chairs and miscellaneous serving equipment, ultra sham

Ms. Mildred Lee June 3, 1991 Page 2

oven, soup server, etc; #1311 Coach Bar/Kitchen car, built 1950's. Contains kitchen equipment consisting of ultrasham ovens, walk-in cooler, hot water heater, stainless steel prep table and sinks and silverware and glassware for approx 110 place settings, 7 dining tables and 28 chairs, bar equipment consists of a blender, electronic till and miscellaneous small bar equipment and glassware; #546 dining coach, built 1950's, contains 12 dining tables, 48 chairs and miscellaneous serving equipment, ultra-sham oven, soup server, etc; #545 Lounge Coach, unfinished car with approximately 17 swivel rockers and a few spare chairs for the other coaches.

A fee of \$15 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

Ms. Pamela J. Scheerer
Oppenheimer Wolff & Donnelly
3400 Plaza VII
45 South Seventh Street
Minneapolis, Minnesota 55402

A short summary of the document to appear in the index follows:

Chattel Mortgage, Assignment and Security Agreement between Dakota Rail, Inc. and Prairie Holding Corporation, dated May 24, 1991, and covering 81A AN F7A Locomotive, F7B SLUG POWER UNIT, 81C AN F7A Locomotive, #191 Dining Coach, #1311 Coach Bar/Kitchen car, #546 dining coach, and #545 Lounge Coach.

Sincerely yours,

Pamela J. Scheerer Legal Assistant

Enclosures
CC: Elli M.A. Mills, Esq.
Eric B. Nilsson, Esq.

Interstate Commerce Commission Washington, P.C. 20423

OFFICE OF THE SECRETARY

Ms. Pamela J. Scheerer Oppenheimer Wolff & Donnelly 3400 Plaza VII 45 South Seventh Street Minneapolis, MN. 55402

Dear

Sir:

The enclosed dcoument(s) was recorded pursuant to the provisions of Section 11303 of the Insterstate Commerce Act, 49 U.S.C. 11303, on , and assigned at 1:15pm 6/5/91 recordation number(s). 17311

Sincerely yours,

. Strickland, Jr. Secretary

CHATTEL MORTGAGE, ASSIGNMENT AND SECURITY AGREEMENT

JUN 5 1991 -1 15 PM

PREAMBLE

This Agreement is entered into as of May 24, 1991 by and between DAKOTA RAIL, INC., a South Dakota corporation, ("Debtor") and PRAIRIE HOLDING CORPORATION, a Florida corporation, ("Secured Party").

RECITALS

<u>FIRST:</u> In evidence of a loan by Secured Party to Debtor, Debtor issued a promissory note to Secured Party dated March 21, 1990 in the amount of \$545,000.00 (the "Note").

SECOND: Debtor has requested a reduction of the interest rate of the Note from ten percent (10%) per annum to eight percent (8%) per annum. Pursuant to that certain Amended and Restated Promissory Note of even date herewith (the "Amended Note"), Secured Party has agreed to the request, provided, however, that Debtor concurrently therewith execute and deliver this Agreement.

NOW, THEREFORE,

1. Grant of Mortgage, Assignment and Security Interest.

To secure the payment of the principal of and interest on the Amended Note and the performance and observance of all the covenants and conditions of this Chattel Mortgage, Assignment and Security Agreement (the "Security Agreement") the Debtor does hereby sell, convey, warrant, mortgage, assign, pledge, grant a security interest in and lien upon, and hypothecate to the Secured Party, its successors and assigns, the following described properties, rights, interests and privileges (all of such properties, rights, interests and privileges hereby mortgaged, assigned and pledged or intended so to be are hereinafter collectively referred to as the "Collateral"):

(a) Railroad equipment consisting of seven (7) cars (said cars are more specifically described in Exhibit A attached hereto) together with all accessories, equipment, parts and appurtenances attached to any of the railroad equipment, whether now owned or hereafter acquired, and all substitutions, renewals and replacements of, and additions, improvements to, any and all of said railroad equipment.

2. The Debtor represents and warrants that:

- (a) The Debtor has title to the Collateral free and clear of all liens and encumbrances.
- (b) No financing statement, chattel mortgage, nor other security agreement covering any of the Collateral is on file in any public office.

- (c) The Debtor is and will continue to be, a corporation duly incorporated and validly existing under the laws of the State of South Dakota, in good standing therein, duly qualified to transact business in all places where such qualification is necessary and all of its outstanding stock is fully paid and non-assessable. The Debtor has corporate power to make this Security Agreement and to incur and perform its 'obligations hereunder.
- (d) The making and performance by the Debtor of this Security Agreement and the execution and delivery of the Amended Note and all other documents executed in connection therewith or incidental thereto have been duly authorized by all necessary corporate action and will not violate any provision of law or of the Debtor's charter or by-laws or result in the breach of or constitute a default under or require consent under any indenture or other agreement or instrument to which the Debtor is a party or by which the Debtor or any of its property may be bound or affected.
- (e) The Debtor agrees to maintain the Collateral in accordance with Manufacturer's specifications and recommendations, and in at least the same condition and manner as other equipment similar thereto owned or leased by the Debtor. The Debtor also agrees to maintain logs recording and evidencing the maintenance performed on the Collateral. The Debtor shall upon request by the Secured Party provide said logs and other documentation relating to the maintenance of said Collateral to the Secured Party for its review and approval.
- (f) No consent, approval, authorization, permit or license from any federal, state or other regulatory authority is required in connection with the making or performance of this Security Agreement by the Debtor, nor will such making or performance violate any law or regulation applicable to the Debtor.
- The Debtor covenants and agrees that it (i) will keep the Collateral or cause the Collateral to be kept in good working order, repair and running condition, and will replace any worn, broken or defective parts; (ii) will keep or cause the Collateral to be insured against loss by damage or destruction in such amounts and against such risks as is usually carried by owners and operators of similar equipment; (iii) will promptly pay all taxes validly levied or assessed against the Collateral and will keep the Collateral free and clear of all liens, attachments encumbrances except liens in favor of the Secured Party; (iv) will allow the Secured Party and its representatives free access to the Collateral at all reasonable times for the purpose of inspection; (v) will promptly notify the Secured Party in writing of any loss to the Collateral; (vi) will indemnify the Secured Party against all claims, liabilities, expenses, costs, losses and charges and expense including any counsel fees, in any manner imposed upon or

accruing against the Secured Party or its assigns including claims for royalties arising because of the use in or about the construction or operation of the Collateral, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right, arising out of or connected with the ownership or use of the Collateral; (vii) will reimburse the Secured Party upon demand for all expenses incurred in connection with perfecting the security interest granted herein or the satisfaction thereof; (viii) will not abandon the Collateral except upon loss, theft or destruction; (ix) will not settle, assign, lease, mortgage or otherwise dispose of any interest in the Collateral, except for Permitted Encumbrances; and (x) will not use or permit the Collateral to be used for any unlawful purpose or in violation of any Federal, state or municipal law, statute or ordinance.

- Assignment of Insurance Proceeds. The Debtor hereby assigns to the Secured Party any and all moneys (including, but not limited to, proceeds of insurance for casualty or business interruption and return or unearned premiums) which may become due under any policy or agreement insuring the Collateral against any loss due to destruction or interruption of use and directs the insurance company issuing such policies or other party to make payment thereof directly to the Secured Party as its interest may appear. The Secured Party may, at its option, apply any insurance or other moneys so received to the cost of repairs to the Collateral and/or to payment of the Amended Note or other expenses of the Secured Party, in any order the Secured Party may determines whether or not due, and shall remit any surplus to the Debtor. The Debtor irrevocably appoints the Secured Party as the Debtor's attorney-in-fact, with full power of substitution, to receive all such moneys, to execute proof of claim, to endorse drafts, checks and other instruments for the payment of money payable to the in payment of such insurance moneys, to adjust and compromise any claim, to execute releases, to cancel any insurance policy covering the Collateral when such policy is not required to protect Debtor's or the Secured Party's interest and to do all other acts and things that may be necessary or required to carry into effect the power herein granted.
- 5. <u>Negative Covenants</u>. The Debtor agrees that until payment in full of the Amended Note, unless the Secured Party shall otherwise agree in writing, it will not:
 - (a) Create any new or additional debt for money borrowed, unless such debt is specifically subordinated in right of payment to the Amended Note, without the prior written consent of the Secured Party.
 - (b) Take any action by amendment to the Certificate of Incorporation or ByLaws of the Debtor, or through any reorganization, consolidation, merger, dissolution, sale of assets or issuance of securities, or by payment of salaries or other compensation to officers or employees in excess of those

customary in the industry and trade, or by any other voluntary action, to avoid or seek to avoid the observance and performance of any terms of this Security Agreement, the Amended Note or any other agreements executed in connection therewith or incidental thereto, and will at all times in good faith assist in the carrying out of all such terms and the taking of all such action as may be necessary or appropriate in order to protect the rights of the Secured Party hereunder or thereunder against any impairment.

- 6. <u>Events of Default</u>. The Debtor agrees that any of the following shall constitute an Event of Default:
 - (a) Default in the payment when due of any principal or interest due on the Amended Note; or
 - (b) Default in its performance of any of the other covenants and agreements contained herein and such default shall continue for thirty (30) days; or
 - (c) Any representation or warranty made by the Debtor shall prove to have been incorrect, or shall be breached, in any material respect, or any statement or certificate furnished by or on behalf of the Debtor under this Security Agreement shall prove to have been incorrect in any material respect; or
 - (d) Any bond, debenture, note or other evidence of debt of the Debtor shall have become due before stated maturity by the acceleration of the maturity thereof by reasons of default or shall have become due by its terms and shall not be promptly paid or extended; or
 - (e) An event that materially and adversely affects the financial condition of Debtor and Secured Party deems itself insecure with respect to the Amended Note; or
 - (f) Ownership or control of Debtor or of substantially all of Debtor's assets is voluntarily or involuntarily sold, transferred, conveyed or assigned; or
 - (g) Any default or event of default under any other indenture, credit or loan agreement or other agreement or instrument under which debt of the Debtor is outstanding or by which the same is evidenced shall have occurred and shall have continued for a period of time sufficient to permit the holder or holders of the respective debt to accelerate the maturity thereof.

As soon as possible after the Debtor knows or has reason to know that any Event of Default as above specified or any event which with notice or lapse of time or both would become such an Event of Default, has occurred, the Debtor shall furnish to the Secured Party written notice of such occurrence, together with a

statement by a senior officer of the Debtor describing the action, if any, which the Debtor proposes to take with respect thereto.

. . . ,

- Remedies. The Debtor agrees that upon an Event of Default, the Secured Party shall have the following rights and remedies to the extent permitted by applicable law: (a) to enter such place or places where any of the Collateral may be located and take and carry away the same by any of its representatives, with or without legal process, to Debtor's or other place of storage; (b) to sell the Collateral at public or private sale, whether or not the Collateral is present at such sale whether or not the Collateral is in the constructive possession of the Secured Party or the person conducting the sale, in one or more sales, as an entirety or in parcels, for the best price that the Secured Party can obtain and upon such terms as the Secured Party may deem desirable; (c) to be the purchaser at any such sale; (d) to require the Debtor to pay all expenses of such sale, taking, keeping and storage of the Collateral, including reasonable attorney's fees; (e) to apply the proceeds of such sale to all expenses in connection with the taking and sale of the Collateral, and any balance of such proceeds toward the payment of the Amended Note in such order of application as the Secured Party may from time to time elect; (f) to require the Debtor to assemble the Collateral upon the Secured Party's demand, at the Debtor's expense and make it available to the Secured Party at a place designated by the Secured Party which is reasonably convenient to both parties; and (g) to exercise any one or more rights or remedies accorded by the Uniform Commercial Code or the Interstate Commerce Act and the Rules and Regulations thereunder. If the proceeds of any such sale are insufficient to pay the expenses, as aforesaid, and the Amended Note, the Debtor agrees to pay any deficiency to the Secured Party upon demand and if such proceeds are more than sufficient to pay such expenses and the Amended Note, the Secured Party agrees to pay the surplus to the Debtor.
- If at the time of any such repossession, the Collateral contains other personal property not included in the Collateral, the Secured Party may take such personal property into custody and store it at the risk and expense of the Debtor. The Debtor agrees to notify the Secured Party within 48 hours after repossession of the Collateral of any such other personal property claimed and that failure to do so will release the Secured Party from any liability for loss or damage thereto.
- 8. <u>Perfection</u>. At the request of the Secured Party, the Debtor will join with the Secured Party in filing this Security Agreement. The Debtor hereby authorizes the Secured Party to file a financing statement signed only by the Secured Party in all places where necessary to perfect the Secured Party's security interest in the Collateral. The Debtor will take such actions and will execute, from time to time, such financing statements, assignments and other documents covering the Collateral, including proceeds thereof, as the Secured Party may request in order to create, evidence, perfect, maintain or continue its security

interest in the Collateral (including additional Collateral acquired by the Debtor after the date hereof), and Debtor will pay the cost of filing the same in all public offices which the Secured Party may deem filing to be appropriate; and will notify the Secured Party promptly upon acquiring any additional Collateral.

Miscellaneous. This Security Agreement is in addition to, and not in limitation of, any other right and remedy the Secured Party may have by virtue of any other instrument or agreement heretofore, contemporaneously herewith or hereafter executed by the Debtor or by law or otherwise including but not limited to the Amended Note or any other agreements executed in connection therewith or incidental thereto. If any provision of this Security Agreement is contrary to applicable law, such provision shall be deemed ineffective without invalidating the remaining provisions hereof. If and to the extent that applicable law confers any right or imposes any duty inconsistent with or in addition to any of the provisions hereof the affected provision shall be considered amended to conform thereto. The Secured Party shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder. A waiver by the Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to or waiver of any such right or remedy which the Secured Party would have had on any future occasion, nor shall the Secured Party be liable for exercising or failing to exercise any such right or remedy. It is expressly understood and agreed that whenever the service of any notice to the Debtor or the Secured Party is herein or otherwise required, such notice may be sent by ordinary mail addressed to:

The Secured Party:

Prairie Holding Corporation 801 W. Bay Drive Suite 800

Largo, Florida 34640

The Debtor:

1 1 2 2 2

Dakota Rail, Inc. 25 Adams Street North Hutchinson, Minnesota 55350

10. Costs of Enforcement. The Debtor shall pay all costs and expenses reasonably incurred by the Secured Party in connection with the preparation, execution, delivery, performance, and enforcement of any of the terms and provisions of this Security Agreement, the Amended Note, and other instruments, documents and agreements executed or delivered in connection with or incidental to this Security Agreement or the Amended Note, and any supplements and amendments thereto, including fees and disbursements of counsel for the Secured Party, and costs, fees and expenses incurred in connection with the filing of mortgages, assignments and financing statements with respect to the railroad cars, documentary and other taxes, if any.

11. Choice of Laws, Etc. This Security Agreement shall be construed in accordance with the laws of the State of Minnesota and shall be binding upon and shall inure to the benefit of the Debtor, the Secured Party and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed all as of the 24th day of May, 1991.
By: Its: 1425, DEN
PRAIRIE HOLDING CORPORATION, a Florida corporation By: Les (Res (Rev)
STATE OF MINNESOTA)) ss. COUNTY OF HENNEPIN_)
The foregoing instrument was acknowledged before me this 24th day of May, 1991, by Elli M. A. Mills, the President of DAKOTA RAIL, INC, a South Dakota corporation, on behalf of the corporation. March M
STATE OF MINNESOTA)) ss. COUNTY OF HENNEPIN) The foregoing instrument was ucknowledged before me this 24th day of May, 1991, by Elli M. A. Mills, the President of PRAIRIE HOLDING CORPORATION, a Florida corporation.
PAMELA J. SCHEERER NOTARY PUBLIC—MINNESOTA HENNEPIN COUNTY

My Comm. Expires Apr. 1, 1997 (SIGNATURE AND ACKNOWLEDGMENT PAGE TO THAT CERTAIN CHATTEL MORTGAGE, ASSIGNMENT AND SECURITY AGREEMENT DATED DAY 24, 1991.)

EXHIBIT A

- 1. 81A AN F7A Locomotive, built by EMD-A Division of General Motors in 1950, 1500HP, Diesel Engine.
- 2. F7B SLUG POWER UNIT, built by EMD-A Division of General Motors in 1950. This unit houses a Rolls Royce 250 kilowatt generator, which supplies power to the dinner train. Generator bought new 1986.
- 3. 81C AN F7A Locomotive, built by EMD-A Division of General Motors in 1950, 1500 HP, Diesel Engine.
- 4. #191 Dining Coach, built 1950's, contains 16 dining tables, 64 chairs and miscellaneous serving equipment, ultra sham oven, soup server, etc.
- 5. #1311 Coach Bar/Kitchen car, built 1950's. Contains kitchen equipment consisting of ultra-sham ovens, walk-in cooler, hot water heater, stainless steel prep table and sinks and silverware and glassware for approximately 110 place settings, 7 dining tables and 28 chairs. Bar equipment consists of a blender, electronic till and miscellaneous small bar equipment and glassware.
- 6. #546 dining coach, built 1950"s, contains 12 dining tables, 48 chairs and miscellaneous serving equipment, ultra-sham oven, soup server, etc.
- 7. #545 Lounge Coach, unfinished car with approximately 17 swivel rockers and a few spare chairs for the other coaches.